

June 28, 2000

By Hand

Mary L. Cottrell

Secretary

Massachusetts Department of Telecommunications

and Energy

One South Station, 2d Floor

Boston, MA 02110

Re: Rulemaking to Promulgate Regulations Governing an Expedited Dispute Resolution
Process for Complaints Involving Competing Telecommunications Carriers as 220
C.M.R. secs. 15.00 et seq.,

D.T.E. 00-39

Dear Ms. Cottrell:

The New England Cable Television Association, Inc. ("NECTA") submits this letter in lieu of Initial Comments in the above rulemaking docket. The original and two (2) copies of this letter are submitted herewith for the Department's convenience. An electronic disk formatted in WordPerfect containing these comments also is enclosed.

NECTA strongly supports the Department's efforts in this rulemaking to devise an expedited dispute resolution process for time-sensitive disputes between telecommunications carriers. We agree with the Department's conclusion in Bell Atlantic Tariffs Nos. 14 and 17, D.T.E. 98-57 (2000), pp. 161-62, that the formal complaint processes currently in place are too cumbersome and slow to address many local competition disputes. We applaud the Department for seeking to develop an option, through this rulemaking, that would facilitate prompt resolution of appropriate disputes.

NECTA is not presenting comprehensive comments at this time. We will review comments of other interested parties and attend the July 7, 2000 public hearing before deciding whether to prepare Reply Comments. Some minor changes to the draft rules seem to be appropriate even on an initial review, however, and should be considered by the Department.

First, the section 15.04(3) threshold requirement that "the parties to the dispute must demonstrate that they attempted to resolve their dispute between themselves for a minimum period of ten days prior to petitioning the Department" likely will be unworkable in practice and is potentially subject to abuse. First, the requirement that the *parties* must prove good faith efforts to resolve the dispute as a threshold requirement places too much power in the hands of the potential malefactor. The language should be changed to require that the *complainant* prove good faith efforts to resolve the case short of litigation. Second and similarly, under the current language a malefactor could frustrate an injured party's pursuit of expedited treatment by refusing to return calls or claiming unavailability to begin talks and, thereby, delay the filing of a complaint for days or even weeks before the mandatory 10 day minimum clock even begins to run. Finally, in cases where a dispute is obviously intractable or time is truly of the essence, the minimum 10 day period would serve no legitimate purpose other than to delay the presentation of the case to the regulators. To address all of these issues, NECTA recommends that the minimum 10 day period be deleted and that section 15.04(3) be changed to read as follows: "In order to be eligible to file for expedited review, the complainant must demonstrate that it attempted in good faith to resolve the dispute prior to petitioning the Department." NECTA notes that a complainant that does not pursue settlement with appropriate vigor risks losing the right to accelerated treatment under the Department's balancing test, including the section 15.04(2)(a) requirement that the parties have "exhausted the reasonable opportunities for settlement."

A second section needing amendment is section 15.04(4), which authorizes the Department staff to "remove the matter from the Accelerated Docket either on its own motion or at the request of any party." This provision is undoubtedly appropriate and necessary to weed out unsuitable cases. Nevertheless, it raises concerns that the Department will act precipitously or without a full understanding of the underlying facts or the importance of expedited handling of the dispute. In order to ensure fair treatment of a complainant that, by definition, believed that the Accelerated Docket was an important means of resolving a time sensitive dispute, the Department should modify the proposed rule to incorporate basic procedural protections: (1) the staff should notify the affected parties in writing that a tentative decision has been made to remove the matter from the Accelerated Docket and briefly state the grounds for the removal; and (2) the parties should be given a short time (e.g., three days following receipt) to comment on the tentative decision. The Department could then review the comments and render a decision on the suitability of the case. This would afford at least minimal process before the Department takes an action that might harm a party's fundamental interests.

As a third and (for now) final point, the proposed rules do not expressly provide for complainants to be able to seek equitable relief, including temporary restraining orders, in cases where they are at risk of irreparable harm in the period leading up to Department review. The rules should be modified to add filing, notice and prompt hearing procedures for cases where complainants seeking access to the Accelerated Docket also need equitable relief.

Once again, NECTA appreciates the opportunity to present these comments in this useful and important docket. We look forward to participating in the hearing and other proceedings in this docket.

NEW ENGLAND CABLE TELEVISION ASSOCIATION, INC.

By its attorneys,

Robert J. Munnelly, Jr.
Director of Legal & Regulatory Affairs